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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 815/2022**

VIKAS

..... Petitioner

Through: Mr. Rahul Thakur, Adv.

versus

THE STATE (N.C.T. OF DELHI)

..... Respondent

Through: Mr. Amit Sahni, APP for the State
with Inspector Pawan Kumar, PS
Narela

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Date of Decision: 26th July, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

CRL.M.A. 10610/2023 in BAIL APPLN. 815/2022

1. The present application has been moved seeking an early hearing.
2. For the reasons stated in the application, it is allowed.

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3. The present application has been filed under Section 439 of the Code of Criminal Procedure, 1973 on behalf of the applicant seeking regular bail in FIR bearing No. 228/2020 registered at Police Station Narela for an offence punishable under Section 302/34 of the Indian Penal Code, 1860.
4. Learned counsel for the applicant submits that the only evidence which is available against the applicant is the disclosure statement made by the applicant/accused and his refusal to take part in TIP proceedings. Learned counsel for the applicant further submits that the applicant is in custody since 09.07.2021. It is further submitted that the charge sheet has already been filed, however, the charges have yet not been framed and the trial may take a long time.
5. Learned APP for the State has vehemently opposed the bail application and submits that the present FIR was lodged on the statement of Durga Singh wherein he has alleged that on the intervening night of 12/15.06.2020, two guards namely Amit Kumar and Sunil were beaten up mercilessly with wooden sticks and iron bars by some unknown persons. The complainant Durga Singh alleged that when he tried to intervene and save the guards, the alleged accused persons



attacked him also, therefore to save his life, he ran away from there. The complainant further stated that he can identify the assailants. Initially, the case was registered under Section 307/34 of IPC. However, later on, both persons succumbed to injuries, and Section 307 was converted into Section 302 of IPC.

6. Learned APP submits that it was a blind murder. However, on 07.07.2021, information was received at PS Narela from Haryana Police, CIA-2/Panipat regarding two accused persons namely Vikas (i.e. the present applicant) and Ankit got arrested in case FIR No. 276/21, under Section 398/401 IPC & 25(1)(b) of Arms Act, PS Sector 29, Panipat Haryana. During the interrogation, the accused persons made a disclosure statement that they also carried out another incident in Narela about 1 year ago along with their other accomplices namely Rahul, Monu, and others.
7. Learned APP for the State submits that during the course of the investigation, the present applicant and Ankit were formally arrested in the Panipat Jail on 09.07.2021. Learned APP for the State submits that the applicant refused to take part in the TIP proceedings. However, the applicant was identified by the eyewitness through the dossier photographs.
8. Learned APP has also submitted that the plea taken by the applicant that his photo had already been published in Dainik



Jagran was also found to be false and in this regard, an updated status report was filed on 11.09.2022 wherein it was found that no such photographs was published. Learned APP also submits that the petitioner is also involved in another FIR No. 276/2021 under Sections 398/401 IPC and Section 25(1)(b) Arms Act.

9. The jurisprudence regarding the grant of bail is very well settled. The principles regarding the grant of bail in serious offence cases have been dealt with in ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr.*** (2004 (7) SCC 528) in para 11 wherein it was *inter-alia* held as under:

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.



(c) Prima facie satisfaction of the court in support of the charge.

10. In the present case, as per the defence, there are two evidence against the petitioner i.e. disclosure statement made by the accused in FIR 276/2021 and his refusal to take part in the TIP proceedings.
11. It is a settled proposition that the TIP is not a substantive piece of evidence. This contention of the learned Defence Counsel that mere refusal to take part in TIP proceedings cannot be a ground to refuse the bail is to be considered. Taking into account the totality of facts and circumstances and without making any observations on the merits of the case, as it may prejudice the parties, the petitioner is admitted to bail on furnishing a personal bail bond of Rs.20,000/- with one surety of the like amount to the satisfaction of the learned Trial Court
Subject to the following conditions:

- (a) the Petitioner shall appear before the Investigating Officer of the case and trial court, as and when required;
- (b) the petitioner shall under no circumstances leave India without prior permission of the Court concerned;
- (c) the petitioner shall not threaten or intimidate the witnesses and shall not tamper with the evidence in any manner;



(d) the petitioner shall also surrender his passport, if any, to the investigation officer.

(e) the Petitioner shall provide his mobile number(s) to the Investigating Officer/court concerned and keep it operational at all times;

(f) In case of change of residential address and/or mobile number, the petitioner shall intimate the same to the Investigating Officer/ Court concerned by way of an affidavit.

12. The learned Session Court is at liberty to impose other bail conditions in order to ensure the presence of the accused in the trial court proceedings and to prevent the tampering of evidence and to not to threaten the prosecution witnesses.
13. It is made clear that no expression made herein shall be tantamount to an expression in the merits of the case.
14. In view of the above, the present bail application stands disposed of.

DINESH KUMAR SHARMA, J

JULY 26, 2023/Pallavi